

## **REMARKS**

### **Claim Amendments**

Claims 26-34 and 42-51 are pending. Claims 26, 33 and 43 are amended.

Claim 26 is amended to include the recitation of "connective tissue disease" from claim 27 and to remove the recitation regarding a mutein having conservative amino acid substitutions to the amino acid sequence in parts a)-c).

Claim 33 is amended to further clarify its antecedent basis in claim 26. The amendment is not intended to change the scope of the claim.

Claim 43 is amended to recite that the cell is an isolated cell. Support can be found, for example, in paragraph [104] of the published application.

No new matter has been added

### **Withdrawn Objections and/or Rejections**

Applicants acknowledge with appreciation the Examiner's withdrawal of the rejections under 35 U.S.C. § 112, second paragraph and 35 U.S.C. § 102(e). In addition, Applicants acknowledge with appreciation the joinder of claims 49-51 with the claims of Group I.

### **Double Patenting**

Claims 26-34 are provisionally rejected under obviousness-type double patenting as unpatentable over claims 32-66 of co-pending Application No. 10/966,845 in view of Franklin (Biochem. Pharmacol. 49(3):267-273 (1995)). Applicants request that the Examiner hold this rejection in abeyance until this rejection is the sole remaining rejection in either the instant application or Application No. 10/966,845. Applicants note that according to MPEP § 804 I.B.1, "[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed

application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer."

Rejection of Claims 26-34 and 42-51 Under 35 U.S.C. § 112, First Paragraph (Enablement)

Claims 26-34 and 42-51 are rejected 35 U.S.C. § 112, first paragraph, as allegedly failing to meet the enablement requirement. Applicants thank the Examiner for stating that the claims are enabled for a method of treating a fibrotic disease by administering a therapeutically effective amount of a) a polypeptide comprising SEQ ID NO:2 or SEQ ID NO:4, b) a polypeptide comprising amino acids 22 to 401 of SEQ ID NO:2 or SEQ ID NO: 4, c) a polypeptide comprising amino acids 22 to 194 of SEQ ID NO:2 or SEQ ID NO: 4, d) a mutein of a-c, where the amino acid sequence has at least 90% identity to one of the sequences in a-c, e) a mutein of a-c which is encoded by a DNA sequence which hybridizes to the complement of the DNA sequence encoding any of a-c under certain conditions, and g) a salt or fused protein of a-e.

The Examiner, however, states that the specification does not reasonably provide enablement for a method of treating and/or preventing a fibrotic disease by administering a mutein of a-c, where any changes in the amino acid sequence are conservative amino acid substitutions to the amino acid sequences in a-c. In order to expedite prosecution, Applicants have amended the independent claims to remove the recitation regarding these muteins.

For these reasons, the instant application sufficiently enables claims to treating or inhibiting the progression and/or symptoms of a fibrotic disease for the substances recited in the claims. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejection of Claims 26-34 and 42-51 Under 35 U.S.C. § 112, First Paragraph

Claims 26-34 and 42-51 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to meet the written description requirement. The Examiner states that "there is no teaching of OPG proteins...wherein *any changes in the amino acid sequence* are conservative amino acid substitutions to the amino acid sequences."

Applicants respectfully disagree. As discussed above, in order to expedite prosecution, the independent claims have been amended to remove the recitation of muteins having conservative amino acid substitutions. Based on the amendment, Applicants believe that the Examiner's comments are not applicable to the claims as amended, and that the instant claims comply with the written description requirement. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 27, 43 and 50 under 35 U.S.C. § 112, Second Paragraph

Claims 27, 43 and 50 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that there is insufficient antecedent basis for the recitation of "connective tissue disease" in claims 27 and 50. Applicants respectfully disagree. Nevertheless, to expedite prosecution, Applicants have amended claim 26 to include the recitation "connective tissue disease," such that claims 27 and 50 have clear antecedent basis. The term "connective tissue disease" is readily understood by one of ordinary skill in the art, as evidenced by Exhibits A (Arthritis Research and Therapy 9(Suppl 2): S4 (2007)) and B (downloaded from MedlinePlus, 1/6/2009).

The Examiner states that claim 43 is indefinite because of the recitation "produced by a cell genetically modified to produce said substance." Claim 43 has been amended according to the Examiner's suggestion to recite an "isolated cell."

Reconsideration and withdrawal of the rejection are respectfully requested.

**CONCLUSION**

In view of the above amendments and remarks, Applicants believe the pending application is in condition for allowance.

If any additional fees are due with this response, please charge our Deposit Account No. 18-1945, from which the undersigned is authorized to draw, under Order No. SLII-P01-001.

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Respectfully submitted,

By /Jesse A. Fecker/

Jesse A. Fecker, Ph.D.

Registration No.: 52,883

ROPES & GRAY LLP

One International Place

Boston, Massachusetts 02110

(617) 951-7000

(617) 951-7050 (Fax)

Attorneys/Agents For Applicant